

AN ORDINANCE RELATING TO STORMWATER DISCHARGES CREATING SECTION 16-1(f) OF THE CODE OF ORDINANCES DEFINING TERMS AND CREATING ARTICLE X OF CHAPTER 16 OF THE CODE OF ORDINANCES TO ENSURE COMPLIANCE WITH THE URBAN COUNTY GOVERNMENT'S MS4 PERMIT AND REDUCE IMPACTS TO PUBLIC HEALTH, WELFARE AND THE ENVIRONMENT DUE TO STORMWATER RUNOFF; INCORPORATING THE STORMWATER MANUAL BY REFERENCE; EXPRESSING INTENT TO ENSURE ADEQUATE MAINTENANCE OF STORMWATER CONTROL DEVICES ON PRIVATE PROPERTY; PROVIDING THAT IN RESIDENTIAL AREAS WHERE A PUBLIC EASEMENT FOR A STORMWATER CONTROL DEVICE EXISTS, THE PRIVATE PROPERTY OWNER IS RESPONSIBLE FOR NON-STRUCTURAL MAINTENANCE OF ANY STORMWATER CONTROL DEVICE; PROVIDING THAT IN RESIDENTIAL AREAS WHERE A PUBLIC EASEMENT FOR A STORMWATER CONTROL DEVICE EXISTS, THE URBAN COUNTY GOVERNMENT IS RESPONSIBLE FOR ALL STRUCTURAL REPAIRS NECESSARY TO MAINTAIN THE STORMWATER DETENTION FUNCTION OF THE STORMWATER CONTROL DEVICE BUT THE GOVERNMENT SHALL NOT UNDERTAKE ANY ACTION TO MAINTAIN THE STORMWATER CONTROL DEVICE AS A RETENTION FACILITY THAT PERMANENTLY CONTAINS WATER; PROVIDING THAT IN A RESIDENTIAL AREA WHERE NO PUBLIC EASEMENT EXISTS, THE PROPERTY OWNER IS RESPONSIBLE FOR ALL NON-STRUCTURAL MAINTENANCE AND STRUCTURAL MAINTENANCE OF THE STORMWATER CONTROL DEVICE; PROVIDING THAT NO TREES, STRUCTURES, EQUIPMENT, UNSAFE CONDITIONS, OR CONDITIONS THAT ADVERSELY AFFECT CONTROL OF WATER QUANTITY OR WATER QUALITY SHALL BE PERMITTED IN STORMWATER CONTROL DEVICES IN RESIDENTIAL AREAS; PROVIDING THAT ALL MAINTENANCE AND REPAIR OF STORMWATER CONTROL DEVICES IN COMMERCIAL AND INDUSTRIAL AREAS IS THE RESPONSIBILITY OF THE OWNER OR MANAGER OF THE PROPERTY; PROVIDING FOR NOTICE OF ANY MAINTENANCE OR REPAIR PROBLEMS; PROVIDING THAT WHERE A STORMWATER CONTROL DEVICE IS LOCATED FULLY OR PARTIALLY UNDERGROUND, THE OWNER OR MANAGER SHALL CAUSE AN ANNUAL INSPECTION TO BE PERFORMED AND REPORTED TO THE DIVISION OF WATER QUALITY; AND PROVIDING THAT NO TREES, STRUCTURES, EQUIPMENT, UNSAFE CONDITIONS, CONDITIONS THAT ADVERSELY AFFECT CONTROL OF WATER QUANTITY OR WATER QUALITY SHALL BE PERMITTED IN STORMWATER CONTROL DEVICES IN COMMERCIAL AND INDUSTRIAL AREAS.

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WHEREAS, the mission of the stormwater management program of the Urban County Government includes safely and efficiently managing stormwater runoff, enhancing public health and safety, protect lives and property, and minimize the discharge of pollutants in stormwater in compliance with applicable federal and state laws, and enhance the natural resources of the community; and

WHEREAS, the Urban County Government, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386, that provides for an ordinance be developed and proposed to the Urban County Council by January 31, 2009 that would require proper maintenance,

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cleaning, and repair of privately-owned stormwater control structures which were required under approved plans or ordinances; and

WHEREAS, the responsibility for maintenance, cleaning, and repair of stormwater control structures is properly shared by private property owners and the Urban County Government depending on the location, property rights, and type of structure;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Subsection 16-1(f) be and hereby is created to read as follows:

(f) With relation to article X of this chapter and any permits issued pursuant thereto the following definitions apply:

- (1) "Agricultural Activities" are activities related to planting of crops or pasture associated with farming or the horse industry, excluding construction for buildings or structures associated with such activities.
- (2) "Authorized Enforcement Agency" means employees or designees of the director of the division of environmental policy.
- (3) "Commercial area" means an area developed for commercial uses including retail, offices, apartment buildings, townhouse/condominium developments, golf courses or other non-residential, non-agricultural, or non-industrial uses.
- (4) "CWA" means the Clean Water Act, also referred to as "the Act" or the "Federal Water Pollution Control Act" as subsequently amended (33 U.S.C. Section 1251 et seq.).
- (5) "Detention basin" or "detention pond" means a stormwater quantity control device that is designed to control peak discharge during a rain event and to completely drain after the design storm passes.
- (6) "Drainage Way" means any channel that conveys surface runoff.
- (7) "Hazardous Materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (8) "Industrial area" means an area developed for industrial activity.
- (9) "Industrial Facility" means any facility located within LFUCG's jurisdictional boundary from which there is a "stormwater discharge associated with industrial activity" as defined in 401 KAR 5:002 Section 1, excluding Construction Sites. It also includes SARA Section 313 facilities referenced in 401 KAR 5:060 Section 12 that have a reasonable potential to discharge pollutants of concern at significant levels in stormwater from industrial activities.
- (10) "Manager" means a person who manages, controls, operates, maintains, and/or directs a commercial or industrial facility or activity.
- (11) MS4, or "Municipal Separate Storm Sewer System", is the conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm drains) that is owned or



operated by LFUCG that discharges to waters of the United States:

- a. designed or used for collecting or conveying stormwater;
  - b. which is not combined sewer; and
  - c. which is not part of a Publicly Owned Treatment Works (POTW) as defined at KRS 224.01-010.
- (12) "Person" means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- (13) "Residential area" means an area which has been developed for single family or two-family dwelling units.
- (14) "Retention basin" or "retention pond" means a basin or pond that has a permanent pool exclusive of basins or ponds on property used solely for agricultural activities.
- (15) "Stormwater" means stormwater runoff, snowmelt runoff, surface runoff and drainage.
- (16) "Stormwater control device" means any detention basin, detention pond, drainage way, extended detention basin, retention basin, catch basin, or any other structure or equipment designed to control stormwater quantity or improve stormwater quality.

Section 2 - That Article X of Chapter 16 of the Code of Ordinances be and hereby is created to read as follows:

#### Article X. STORMWATER DISCHARGES.

##### A. General

###### Sec. 16-84. Purpose and Intent.

The purpose of this Article is to set forth ordinances that will ensure compliance with the urban county government's MS4 permit regulations implementing the Clean Water Act and reduce impacts to public health, welfare, and the environment due to stormwater runoff from public and private properties, including flooding and property damage.

###### Sec. 16-85. Stormwater Manual incorporated.

The urban county government Stormwater Manual, adopted in 2009, is incorporated herein by reference provided that in the event of any conflict between the manual and this Article the provisions of this Article shall apply.

##### B. Maintenance of Privately Owned Stormwater Controls

###### Sec. 16-86. Purpose and intent; applicability.

(a) The purpose of sections 16-87 and 16-88 is to ensure adequate maintenance of stormwater control devices located on private property.

(b) These sections apply to any stormwater control device that is entirely or partially located on private property.

###### Sec. 16-87. Stormwater control devices in residential areas.

(a) In a residential area where a public easement for a stormwater control device exists, the private property owner is responsible for non-structural maintenance of any detention basin, detention pond, retention basin, retention pond or any other stormwater control device located on the owner's property, including but not limited to mowing the area, including any embankment, removing algae and all debris that

accumulates in the basin, including litter and tree limbs, sodding or seeding bare areas, including areas on the embankment, and taking care of any landscaped areas such as trees and shrubs.

- (b) In a residential area where a public easement for a stormwater control device exists, the urban county government is responsible for all structural repairs, maintaining the integrity of any embankment and the structural items in the embankment, including concrete, pipe, gabions, stone, spillways, headwalls, repairing eroded areas on the embankment that threaten the stability of the embankment, repairing paved ditches and inlet structures in the basin, removing excess silt that affects the functionality of the stormwater control device and removing large debris that obstructs any outlet pipes or spillways of any dam provided the above-described actions are necessary to maintain the stormwater detention function of the stormwater control device. The urban county government shall not undertake any action, including, but not limited to, replacement of a liner, to maintain the stormwater control device as a retention facility that permanently contains water.
- (c) In a residential area where no public easement exists, the property owner is responsible for non-structural maintenance of any detention basin, detention pond, retention basin, retention pond or any other stormwater control device located on the owner's property, including but not limited to mowing the area, including any embankment, removing algae and all debris that accumulates in the basin, including litter and tree limbs, sodding or seeding bare areas, including areas on the embankment, and taking care of any landscaped areas such as trees and shrubs and is also responsible for all structural repairs, maintaining the integrity of any embankment and the structural items in the embankment, including concrete, pipe, gabions, stone, spillways, headwalls, repairing eroded areas on the embankment that threaten the stability of the embankment, repairing paved ditches and inlet structures in the basin, removing excess silt that affects the functionality of the stormwater control device as directed by the urban county government, and removing large debris that obstructs any outlet pipes or spillways of any dam.
- (d) No trees shall be planted on any dam structure associated with a stormwater control device.
- (e) No structures or equipment including but not limited to, fences, gazebos, swimming pools, trampolines, or buildings shall be placed in a stormwater control device.
- (f) No fill dirt shall be placed in a stormwater control device without prior approval by the director, division of water quality.
- (g) The property owner is responsible for taking reasonable care to ensure that a stormwater control device does not contain conditions that are unsafe or that adversely affect water quality including, but not limited to, leaving tools or equipment or misusing pesticides and/or herbicides in the basin.
- (h) The property owner shall ensure that no equipment, structures, materials, or substances are located in the easement that may adversely affect the performance of a stormwater control device in controlling stormwater quantity or that adversely affect water quality.
- (i) Nothing herein shall preclude the urban county government from assuming responsibility to maintain any stormwater control device pursuant to contract, easement, or other legal arrangement.



Sec. 16-88. Stormwater Controls in Commercial and Industrial Areas.

- (a) Maintenance and repair of retention and detention basins and other stormwater control devices located on property used for commercial or industrial purposes is the responsibility of the property owner and the manager of the property who shall ensure the facilities are operating as intended.
- (b) The property owner and/or manager of the property may be notified in writing by the division of water quality of any problems or maintenance or repair concerns that must be addressed or corrected, such as removing debris from the basin, repairing eroded areas on the embankment, replacing a crushed pipe, or improving embankment stability.
- (c) On property where a stormwater control device is located fully or partially underground, the owner and manager of the property shall be responsible for causing an inspection of the facility to be performed annually and shall submit an annual inspection report to the division of water quality by January 31 of each year for the prior calendar year. The inspection report shall be prepared by a Professional Engineer licensed to practice in Kentucky and shall address the condition of the device for meeting its intended purpose.
- (d) No trees shall be planted on any dam structure associated with a stormwater control device.
- (e) No structures, including but not limited to, fences, gazebos, swimming pools, trampolines, or buildings shall be placed in a stormwater control device.
- (f) No fill dirt shall be placed in a stormwater control device without prior approval by the director, division of water quality.
- (g) The property owner or manager is responsible for taking reasonable care to ensure that a stormwater control device does not contain conditions that are unsafe or that adversely affect water quality including, but not limited to, leaving tools or equipment or misusing pesticides and/or herbicides in a basin.
- (h) The property owner or manager shall ensure that no structures, materials, or substances are located in the stormwater control device that may adversely affect its performance in controlling stormwater quantity or that adversely affect water quality.

Section 3 – That this Ordinance shall be effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: March 26, 2009

  
MAYOR

ATTEST:

  
CLERK OF THE URBAN COUNTY COUNCIL

PUBLISHED: April 2, 2009-1t

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